

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

NOVEMBER 6, 2003

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T.R.A. DOCKET ROOM

IN RE: Implementation of the Federal) Docket No. 03-00491
Communications Commission's Triennial)
Review Order-9 Month Proceeding-Switching)
)

**DIECA COMMUNICATIONS COMPANY, INC. D/B/A COVAD COMMUNICATIONS
COMPANY OBJECTIONS TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

DIECA Communications Company, Inc. d/b/a Covad Communications Company ("Covad"), in the time established by the Procedural Schedule provided by Director Jones on October 21, 2003, hereby serves its Specific Objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Set of Interrogatories and Requests for Production to Covad.

GENERAL OBJECTIONS

1. Covad objects to the "Definitions" section, the "General Instructions," and the individual items of BellSouth's First Set of Interrogatories to Covad to the extent that they are overly broad, unduly burdensome, and/or oppressive. Covad will attempt to identify specific requests to which this objection applies within the specific objections that follow.
2. Covad objects to the "Definitions," the "General Instructions," and the individual interrogatories to the extent they are irrelevant to the issues in this docket and not reasonably calculated to lead to the discovery of admissible evidence. By way of illustration and not limitation, Covad objects to interrogatories that seek information that is unrelated to or inconsistent with the parameters and methodology of the impairment analysis prescribed by the

FCC in its Triennial Review Order. Covad will attempt to identify individual items to which this general objection is applicable within the specific objections that follow.

3. Covad objects to the “Definitions,” the “General Instructions,” and the individual interrogatories to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests.

4. Covad objects to the “General Instructions” and the items of BellSouth’s First Set of Interrogatories to Covad to the extent that they purport to impose discovery obligations on Covad that exceed the scope of discovery allowed by the applicable Tennessee Rules of Civil Procedure.

5. Covad objects to BellSouth’s First Set of Interrogatories to Covad to the extent that the requests seeks discovery of materials and/or information protected by attorney/client privilege, the work product doctrine, the accountant/client privilege, or any other applicable privilege.

6. Covad objects to BellSouth’s First Set of Interrogatories to the extent that the requests would require disclosure of trade secrets and/or proprietary confidential information that either should not be disclosed at all or should be disclosed only pursuant to the terms of a mutually acceptable confidentiality agreement and the rules and orders of the TRA governing confidentiality.

7. Covad objects to all interrogatories which would require Covad to provide information which is already in BellSouth’s possession or is in the public record before the TRA.

To duplicate information that BellSouth already has or is readily available to BellSouth would be unduly burdensome and oppressive.

8. Covad objects to BellSouth's First Set of Interrogatories to the extent BellSouth seeks to impose an obligation on Covad to respond on behalf of subsidiaries and/or former officers, employees, agents, and directors on the grounds that such requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

9. Covad objects to any interrogatory that requires the identification of "every," "all" or "each" responsive document, as it can not guarantee, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be identified.

SPECIFIC OBJECTIONS TO INTERROGATORIES

10. INTERROGATORIES 1, 2, 5-7 and 18 [Regarding Covad Owned ATM Switches]

Because Covad does not provide voice services over its ATM switches and because ATM switches are not circuit switches, discovery related to Covad's ATM switches serving only xDSL customers is irrelevant to both the "triggers" and "potential deployment" analyses in this docket. The Federal Communications Commission ("FCC") states in its Triennial Review Order ("TRO") that "[f]or purposes of the examination described here, mass market customers are *analog voice customers . . .*" TRO ¶ 497 (emphasis added). In the "triggers" analysis, the FCC repeatedly states that the switches to be considered are *only* those "*actively providing voice service* used to serve the mass market." TRO ¶ 499 (emphasis added); see also, ¶ 498 ("triggers

identify *existing* examples of multiple competitive LECs using their own switches to serve mass market [*analog voice*] customers . . .”) (emphasis added); ¶ 499 (“the identified competitive switch providers should be *actively providing voice service* to mass market customers . . .”) (emphasis added); ¶ 500 (“we find that states shall not evaluate any other factors The key consideration to be examined by state commissions is whether the providers are *currently* offering and able to provide [*analog voice*] service . . .”) (emphasis added).

Similarly, in the “potential deployment” analysis, the FCC states that “States should first examine whether competitors are already using their own switches *to serve voice customers* . . .” and whether there “are two wholesale providers or three self-provisioners of switching *serving the voice enterprise market* . . .” TRO ¶ 508 (emphasis added); see also ¶ 507. Covad does not provide a single voice service – to mass markets or enterprise markets – over its ATM switches. While ATM switches may have the potential to support certain kinds of voice over internet protocol (VoIP) services, such nascent technologies are not currently available to serve mass markets. If BellSouth asserts that discovery related to ATM switches is relevant on the basis that VoIP is capable of serving a mass market, Covad requests the opportunity to explain VoIP technologies (which is too complex to include here), without any advocacy, to Staff and/or the Commission before being compelled to provide more information than the make, model, number, location and total customers served in Tennessee for Covad’s ATM switches – which Covad will provide BellSouth in response to its discovery.

Additionally, the FCC’s consideration of circuit switches is wholly separate from the FCC’s analysis of ATM switching. Indeed, the FCC’s holdings regarding these two kinds of switches are diametrically opposed: circuit switches serving the mass *voice* market are unbundled while ATM switches serving the mass *data* market are not. Compare ¶¶ 459-485

with ¶¶ 535-541 (noting that ATM switches are ubiquitous and “are much cheaper to deploy than circuit switches.” ¶ 538). Clearly then, ATM switches and circuit switches are not interchangeable. As such, the discovery served on Covad seeking information about Covad’s ATM switches is not reasonably calculated to lead to admissible evidence and is, consequently, irrelevant.

Covad will, subject to and without waiving the foregoing objections, provide the make, model, number, location and total customers served in Tennessee for Covad’s ATM switches in response to the above-referenced discovery.

11. SPECIFIC OBJECTIONS TO INTERROGATORIES 15-17 and 19-49 and REQUESTS FOR PRODUCTION 1-16 [Regarding Covad’s xDSL Business, Business Plans, and Statistics]

Covad objects to Interrogatories 15-17 and 19-49 and Requests for Production 1-16 as irrelevant and overly broad as to Covad. Interrogatories 15-17 and 19-49 and Requests for Production 1-16 are overly broad because they use the term “qualifying service” as defined by 47 C.F.R. §51.5, which includes “digital subscriber line services” (DSL). This docket is about impairment of voice providers without access to circuit switching (UNE-P), not DSL.

Interrogatories 15-17 and 19-49 and Requests for Production 1-16 are irrelevant as to Covad because they are a “cut and paste” set of interrogatories and document requests designed for and served on Tennessee competitive voice providers. Not surprisingly, a great deal of BellSouth’s “cut and paste” voice discovery is both overly broad and irrelevant as to Covad – a DSL-only company. Because Covad solely provides high speed internet access, its churn, customer counts, business models, marketing, geographic markets, revenues, customer classifications, customer acquisition costs, cost of capital, expected customer growth and similar

requested information is not probative of such statistics for voice providers. The “potential deployment” portion of this docket addresses the potential use of self-provisioned or wholesale switches to serve the mass *voice* market – not the mass DSL market. In the TRO, the FCC separately addressed that market. TRO ¶¶ 537-541.

While Covad has asserted that economic and operational impairment related the lack of line splitting under UNE-L should be considered in this docket, those issues are not the subject of BellSouth’s discovery. The economic impairment problems raised by Covad are associated with *voice* providers attempting to compete for customers in an environment where most telecommunications services are sold as part of a bundle of such services, not a general business model for UNE-L or DSL. Covad does not sell voice products at all, bundled or otherwise.

Most importantly, *BellSouth* agrees that a data-only provider’s business statistics are irrelevant in the nine month switching case. When served with discovery from Covad in the nine month case in Kentucky, BellSouth replied, in relevant part:

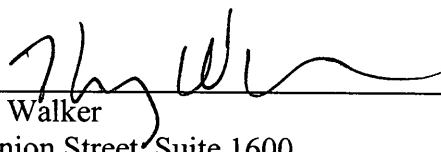
The revenues at issue in the 9-month case are revenues for a hypothetical, efficient CLEC. Such a CLEC would provide its own voice and data services to maximize revenue. Thus, the revenues that an efficient CLEC who deploys the switch can obtain are revenues from its own voice and data services. Line splitting, and arrangement in which a CLEC only provides voice and allows a second CLEC to provide data, is irrelevant to the assessment of the truly efficient CLEC.

BellSouth Telecommunications, Inc.’s General Objections to
Covad Communications Company’s First Set of Data Requests,
KYPSC Case No. 2003-0379, filed October 24, 2003 at 5.

If BellSouth considers the revenues from line splitting by a data-only provider, like Covad, to be irrelevant in the nine month switching case, then the other business statistics sought from Covad are equally irrelevant. Accordingly, Covad objects to Interrogatories 15-17 and 19-49 and Requests for Production 1-16 as overly broad and irrelevant in this docket as to Covad.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

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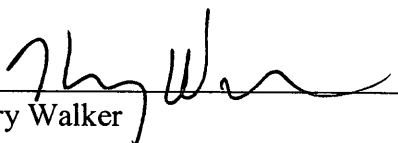
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